

ASSEMBLY BILL

No. 1628

Introduced by Assembly Member Kaloogian

February 26, 1999

An act to amend Sections 1826, 1851, and 2356.5 of the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, as introduced, Kaloogian. Conservatorships.

(1) Existing law provides for the establishment and regulation of conservatorships. Existing law specifies the duties of a court investigator with respect to the establishment and review of the conservatorship.

This bill would require the court investigator to review the allegations of a petition regarding the reasons why the powers that would be established pursuant to the provisions of this bill described in (2) below are required and determine whether the conservatee objects to the powers, and if the powers are established. It would also require the court investigator, when court review of a conservatorship is required, to inform the conservatee of the right to object to the powers and determine whether the conservatee wishes to petition the court to modify or revoke the powers.

(2) Existing law authorizes, upon a court's findings that a conservatee has dementia and a functional impairment, a conservator to place the conservatee in a prescribed secured facility and authorize the administration of prescribed medication. Existing law requires a court investigator to include a determination in a specified report as to whether

these powers granted to the conservator are warranted. Existing law requires the court investigator to advise the conservatee of his or her right to object to the conservator's powers under these provisions.

This bill would revise and recast these provisions to, among other things, authorize a conservator to restrict the ability of a conservatee with dementia from leaving the location where he or she resides upon court order under specified conditions.

(3) By providing that the appearance of an attorney at the time of a hearing on the powers of a conservatee is by declaration under penalty of perjury, thus expanding the crime of perjury, the bill would create a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1826 of the Probate Code is
2 amended to read:

3 1826. Regardless of whether the proposed
4 conservatee attends the hearing, the court investigator
5 shall do all of the following:

6 (a) Interview the proposed conservatee personally.

7 (b) Inform the proposed conservatee of the contents
8 of the citation, of the nature, purpose, and effect of the
9 proceeding, and of the right of the proposed conservatee
10 to oppose the proceeding, to attend the hearing, to have
11 the matter of the establishment of the conservatorship
12 tried by jury, to be represented by legal counsel if the
13 proposed conservatee so chooses, and to have legal
14 counsel appointed by the court if unable to retain legal
15 counsel.



1 (c) Determine whether it appears that the proposed
2 conservatee is unable to attend the hearing and, if able to
3 attend, whether the proposed conservatee is willing to
4 attend the hearing.

5 (d) Review the allegations of the petition as to why the
6 appointment of the conservator is required and, in
7 making his or her determination, do the following:

8 (1) Refer to the supplemental information form
9 submitted by the petitioner and consider the facts set
10 forth in the form that address each of the categories
11 specified in paragraphs (1) to (5), inclusive, of
12 subdivision (a) of Section 1821.

13 (2) Consider, to the extent practicable, whether he or
14 she believes the proposed conservatee suffers from any of
15 the mental function deficits listed in subdivision (a) of
16 Section 811 that significantly impairs the proposed
17 conservatee's ability to understand and appreciate the
18 consequences of his or her actions in connection with any
19 of the functions described in subdivision (a) or (b) of
20 Section 1801 and identify the observations that support
21 that belief.

22 (e) Determine whether the proposed conservatee
23 wishes to contest the establishment of the
24 conservatorship.

25 (f) Determine whether the proposed conservatee
26 objects to the proposed conservator or prefers another
27 person to act as conservator.

28 (g) Determine whether the proposed conservatee
29 wishes to be represented by legal counsel and, if so,
30 whether the proposed conservatee has retained legal
31 counsel and, if not, the name of an attorney the proposed
32 conservatee wishes to retain.

33 (h) Determine whether the proposed conservatee is
34 capable of completing an affidavit of voter registration.

35 (i) If the proposed conservatee has not retained legal
36 counsel, determine whether the proposed conservatee
37 desires the court to appoint legal counsel.

38 (j) Determine whether the appointment of legal
39 counsel would be helpful to the resolution of the matter
40 or is necessary to protect the interests of the proposed

1 conservatee in any case where the proposed conservatee
2 does not plan to retain legal counsel and has not
3 requested the appointment of legal counsel by the court.

4 *(k) Review the allegations of the petition regarding*
5 *the reasons why the powers under Section 2356.5 are*
6 *required and determine whether the conservatee objects*
7 *to the powers.*

8 *(l) Report to the court in writing, at least five days*
9 *before the hearing, concerning all of the foregoing,*
10 *including the proposed conservatee's express*
11 *communications concerning both of the following:*

12 *(1) Representation by legal counsel.*

13 *(2) Whether the proposed conservatee is not willing to*
14 *attend the hearing, does not wish to contest the*
15 *establishment of the conservatorship, and does not object*
16 *to the proposed conservator or prefer that another person*
17 *act as conservator.*

18 ~~*(t)*~~

19 *(m) Mail, at least five days before the hearing, a copy*
20 *of the report referred to in subdivision ~~(k)~~ (l) to all of the*
21 *following:*

22 *(1) The attorney, if any, for the petitioner.*

23 *(2) The attorney, if any, for the proposed conservatee.*

24 *(3) Any other persons as the court orders.*

25 ~~*(m)*~~

26 *(n) The court investigator has discretion to release the*
27 *report required by this section to the public conservator,*
28 *interested public agencies, and the long-term care*
29 *ombudsman.*

30 ~~*(n)*~~

31 *(o) The report required by this section is confidential*
32 *and shall be made available only to parties, persons given*
33 *notice of the petition who have requested this report or*
34 *who have appeared in the proceedings, their attorneys,*
35 *and the court. The court has discretion at any other time*
36 *to release the report, if it would serve the interests of the*
37 *conservatee. The county clerk shall provide for the*
38 *limitation of the report exclusively to persons entitled to*
39 *its receipt.*

40 ~~*(t)*~~

(p) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

~~(p)~~

(q) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

SEC. 2. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. *If powers under Section 2356.5 have been granted, the court investigator shall inform the conservatee of the right to object to the powers.* The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870) *or granted powers under Section 2356.6*, the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order *under Section 1870, or the powers under Section 2356.5*, should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the

1 conservator and conservatee at the same time it is
2 certified to the court.

3 (c) In the case of a limited conservatee, the court
4 investigator shall make a recommendation regarding the
5 continuation or termination of the limited
6 conservatorship.

7 (d) The court investigator may personally visit the
8 conservator and other persons as may be necessary to
9 determine whether the present conservator is acting in
10 the best interests of the conservatee.

11 (e) The report required by this section shall be
12 confidential and shall be made available only to parties,
13 persons given notice of the petition who have requested
14 the report or who have appeared in the proceeding, their
15 attorneys, and the court. The court shall have discretion
16 at any other time to release the report if it would serve the
17 interests of the conservatee. The county clerk shall make
18 provision for limiting disclosure of the report exclusively
19 to persons entitled thereto under this section.

20 SEC. 3. Section 2356.5 of the Probate Code is
21 amended to read:

22 2356.5. (a) ~~The Legislature hereby finds and~~
23 ~~declares:~~

24 ~~(1) That people with dementia, as defined in the last~~
25 ~~published edition of the “Diagnostic and Statistical~~
26 ~~Manual of Mental Disorders,” should have a~~
27 ~~conservatorship to serve their unique and special needs.~~

28 ~~(2) That, by adding powers to the probate~~
29 ~~conservatorship for people with dementia, their unique~~
30 ~~and special needs can be met. This will reduce costs to the~~
31 ~~conservatee and the family of the conservatee, reduce~~
32 ~~costly administration by state and county government,~~
33 ~~and safeguard the basic dignity and rights of the~~
34 ~~conservatee.~~

35 ~~(3) That it is the intent of the Legislature to recognize~~
36 ~~that the administration of psychotropic medications has~~
37 ~~been, and can be, abused by caregivers and, therefore,~~
38 ~~granting powers to a conservator to authorize these~~
39 ~~medications for the treatment of dementia requires the~~

~~protections specified in this section.~~ For the purposes of this section, the following terms are defined, as follows:

(1) “Dementia” is defined as found in the most recently published edition of the “Diagnostic and Statistical Manual of Mental Disorders.”

(2) “Medication” is defined as a drug prescribed for the primary purpose of affecting the behavior, cognition, or mood disorders of the conservatee. A medication administered for any other primary purpose shall not be affected by this section.

(3) “Lacks capacity to give informed consent” is defined as a conservatee who has been adjudged to lack capacity to give informed consent for medical treatment under this chapter.

(b) Notwithstanding any other provision of law, a conservator may ~~authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, or a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code, and which has a care plan that meets the requirements of Section 87724 of Title 22 of the California Code of Regulations, restrict the ability of a conservatee with dementia from leaving the location where the conservatee resides only upon a court’s finding, by clear and convincing evidence, of all of the following:~~

~~(1) The conservatee has dementia, as defined in the last published edition of the “Diagnostic and Statistical Manual of Mental Disorders.”~~

~~(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit significantly impairs the person’s ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.~~

~~(3) The conservatee needs or would benefit from a restricted and secure environment, placement from~~

1 *which the conservatee's ability to leave is restricted as*
2 *demonstrated by evidence presented by the physician or*
3 *psychologist referred to in paragraph (3) (2) of*
4 *subdivision (f) (e).*

5 ~~(4)~~

6 (2) The court finds that the proposed placement in a
7 locked facility is the least restrictive placement
8 appropriate to the needs of the conservatee.

9 (c) Notwithstanding any other provision of law, a
10 conservator of a person may authorize the administration
11 of ~~medications~~ *medication* appropriate for the care and
12 treatment of dementia, upon a court's finding, by clear
13 and convincing evidence, of all of the following:

14 (1) The conservatee ~~has~~ *suffers from* dementia;—~~as~~
15 ~~defined in the last published edition of the “Diagnostic~~
16 ~~and Statistical Manual of Mental Disorders.”.~~

17 (2) The conservatee lacks the capacity to give
18 informed consent to the administration of ~~medications~~
19 ~~appropriate to the care of dementia, and has at least one~~
20 ~~mental function deficit pursuant to subdivision (a) of~~
21 ~~Section 812, and this deficit or deficits significantly~~
22 ~~impairs the person's ability to understand and appreciate~~
23 ~~the consequences of his or her actions pursuant to~~
24 ~~subdivision (b) of Section 812~~ *medication as defined in*
25 *this section.*

26 (3) The conservatee needs or would benefit from
27 appropriate medication as demonstrated by evidence
28 presented by the physician or psychologist referred to in
29 paragraph ~~(3)~~ (2) of subdivision ~~(f)~~ (e).

30 (4) *The conservatee is not an adherent of a religion*
31 *whose tenets and practices call for a reliance on prayer*
32 *alone for healing.*

33 ~~(d) Pursuant to subdivision (b) of Section 2355, in the~~
34 ~~case of a person who is an adherent of a religion whose~~
35 ~~tenets and practices call for a reliance on prayer alone for~~
36 ~~healing, the treatment required by the conservator under~~
37 ~~subdivision (e) shall be by an accredited practitioner of~~
38 ~~that religion in lieu of the administration of medications.~~

39 ~~(e) A conservatee who is to be placed in a facility~~
40 ~~pursuant to this section shall not be placed~~ *Nothing in this*

1 *division shall authorize a conservator to place a*
2 *conservatee in a mental health rehabilitation center as*
3 *described in Section 5675 of the Welfare and Institutions*
4 *Code, or in an institution for mental disease as described*
5 *in Section 5900 of the Welfare and Institutions Code.*

6 ~~(f)~~

7 *(e) A petition for authority to act under this section*
8 *shall be governed by Section 2357, except the following:*

9 ~~(1) The conservatee shall be represented by an~~
10 ~~attorney pursuant to Chapter 4 (commencing with~~
11 ~~Section 1470) of Part 1.~~

12 ~~(2) The conservatee shall be produced at the hearing,~~
13 ~~unless excused pursuant to Section 1893.~~

14 ~~(3)~~

15 *(2) The petition shall be supported by a declaration of*
16 *a licensed physician, or a licensed psychologist acting*
17 *within the scope of his or her licensure license, regarding*
18 *each of the findings required to be made under this*
19 *section for any power requested, except that the*
20 *psychologist has at least two years of experience in*
21 *diagnosing dementia.*

22 ~~(4)~~

23 *(3) The petition may be filed by any of the persons*
24 *designated in Section 1891.*

25 ~~(g)~~

26 *(4) Notice, along with a copy of the petition, shall be*
27 *served as provided in Chapter 3 (commencing with*
28 *Section 1460) of Part 1.*

29 *(f) The court investigator shall annually investigate*
30 *and report to the court every two years pursuant to*
31 ~~*Sections 1850 and 1851 if the conservator is authorized to*~~
32 ~~*act under this section, upon the filing of a petition seeking*~~
33 ~~*powers under this section, whether powers granted*~~
34 ~~*under this section are warranted. If powers are granted*~~
35 ~~*to the conservator under this section, the court*~~
36 ~~*investigator's subsequent reports in the proceeding shall*~~
37 ~~*address the continued need for these powers. In addition*~~
38 ~~*to the other matters provided in Section 1851, the*~~
39 ~~*conservatee shall be specifically advised by the*~~
40 ~~*investigator that the conservatee making reports to the*~~

1 court, the court investigator shall specifically advise the
2 conservatee that he or she has the right to object to the
3 conservator's powers granted under this section, and the
4 report shall also include ~~whether powers granted under~~
5 ~~this section are warranted~~ the conservatee's response to
6 the advisement. ~~If the conservatee objects to the~~
7 ~~conservator's powers granted under this section, or the~~
8 ~~investigator determines that some change in the powers~~
9 ~~granted under this section is warranted, the court shall~~
10 ~~provide a copy of the report to the attorney of record for~~
11 ~~the conservatee. If no attorney has been appointed for the~~
12 ~~conservatee, one shall be appointed pursuant to Chapter~~
13 ~~4 (commencing with Section 1470) of Part 1. The attorney~~
14 ~~shall, within 30 days after receiving this report,~~

15 (g) *If the court investigator determines that it would*
16 *be helpful to the resolution of the matter or is necessary*
17 *to protect the person's interests, or if the proposed*
18 *conservatee requests appointment of legal counsel or*
19 *objects to the granting of powers sought under this*
20 *section, the court shall appoint counsel pursuant to*
21 *Chapter 4 (commencing with Section 1470) of Part 1 for*
22 *the proposed conservatee only if no attorney is currently*
23 *acting as attorney for the conservatee. In the absence of*
24 *(1) objections expressed by the proposed conservatee to*
25 *the court investigator, or (2) an order by the court, the*
26 *attorney may proceed on the basis of the declarations and*
27 *pleadings filed with the court and may appear at the time*
28 *of hearing by declaration under penalty of perjury.*

29 (h) *If no petition is pending at the time of*
30 *appointment of the attorney, upon receiving the report*
31 *of the court investigator, the attorney shall do one of the*
32 *following:*

33 (1) *File a petition with the court regarding the status*
34 *of the conservatee.*

35 (2) *File a written report with the court stating that the*
36 *attorney has ~~met with the conservatee and determined~~*
37 *that the petition would be inappropriate.*

38 ~~(h)~~ *determined that the petition would be*
39 *inappropriate and serve the persons who would be*
40 *entitled to notice of a petition under Section 1460.*

1 (i) A petition to terminate authority granted under
2 this section shall be governed by Section 2359.

3 ~~(i) Nothing in this section shall be construed to affect~~
4 ~~a conservatorship of the estate of a person who has~~
5 ~~dementia.~~

6 (j) Nothing in this section shall affect the laws that
7 would otherwise apply in emergency situations.

8 (k) Nothing in this section shall affect ~~current law~~
9 ~~regarding~~ the power of a probate court to fix the
10 residence of a conservatee or to authorize medical
11 treatment for any conservatee who has not been
12 determined to have dementia.

13 ~~(l) (1) Until such time as the conservatorship~~
14 ~~becomes subject to review pursuant to Section 1850, this~~
15 ~~section shall not apply to a conservatorship established on~~
16 ~~or before the effective date of the adoption of Judicial~~
17 ~~Council forms that reflect the procedures authorized by~~
18 ~~this section, or January 1, 1998, whichever occurs first.~~

19 ~~(2) Upon the adoption of Judicial Council forms that~~
20 ~~reflect the procedures authorized by this section or~~
21 ~~January 1, 1998, whichever occurs first, this section shall~~
22 ~~apply to any conservatorships established after that date.~~
23 *This section shall apply to conservatorships established*
24 *prior to January 1, 1998, when the conservatorship*
25 *becomes subject to review pursuant to Section 1850. The*
26 *court investigator shall determine and report whether*
27 *the conservator is exercising powers for which*
28 *authorization under this section is required.*

29 (m) *The conservator of a conservatee who has been*
30 *adjudged to lack the capacity to give informed medical*
31 *consent under Section 2355, may authorize the*
32 *placement permitted under subdivision (b) and may also*
33 *authorize the administration of medications under*
34 *subdivision (c) without the authority of the court granted*
35 *under this section, provided that a petition for the*
36 *exercise of authority under this section is filed with the*
37 *court in the proceedings within 60 days of the first date*
38 *of exercise by the conservator of any of the powers set*
39 *forth herein.*

1 (n) *Nothing in this section shall prohibit a temporary*
2 *conservator from exercising such powers of placement*
3 *and consent for medical treatment that are authorized*
4 *pursuant to Chapter 3 (commencing with Section 2250).*

5 SEC. 4. No reimbursement is required by this act
6 pursuant to Section 6 of Article XIII B of the California
7 Constitution because the only costs that may be incurred
8 by a local agency or school district will be incurred
9 because this act creates a new crime or infraction,
10 eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition
13 of a crime within the meaning of Section 6 of Article
14 XIII B of the California Constitution.

